

1 C. YONG JEONG, ESQ. (SBN 255244)
2 PAUL J. COHEN, ESQ. (SBN 293797)
3 DANIEL D. HOFFMAN, ESQ. (SBN 296794)
4 JEONG & LIKENS, L.C.
5 1055 W. 7TH Street, Suite 2280
6 Los Angeles, California 90017
7 Tel. 213-688-2001
8 Fax. 213-688-2002

9 Attorneys for Plaintiff, UNICOLORS, INC.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNICOLORS, INC., a California Corporation;

Case Number: 2:15-cv-00661

Plaintiff,

vs.

MACY'S, INC., a Delaware Corporation;
NOTATIONS, INC. d/b/a ELEMENTZ, a
Pennsylvania Corporation; and DOES 1-20,
inclusive,

PLAINTIFF'S COMPLAINT FOR:
1. COPYRIGHT INFRINGEMENT
AND/OR
2. VICARIOUS AND/OR CONTRIBUTORY
COPYRIGHT INFRINGEMENT

Jury Trial Demanded

Defendants.

Plaintiff UNICOLORS, Inc. ("Plaintiff" or "UNICOLORS") by and through its undersigned attorneys, hereby prays to this honorable Court for relief and remedy based on the following:

INTRODUCTION

Plaintiff is a California-based company engaged in the apparel industry as a textile converter of imported and domestic fabrications. Plaintiff creates, or purchases and obtains, exclusive rights to unique two-dimensional graphic artworks for use on textiles and garments, and those textiles and garments are transacted primarily in the fashion industry. Plaintiff owns these designs in

1 exclusivity and makes sales of products bearing these designs for profit. Plaintiff's business is
2 predicated on its ownership of these designs and it spends a considerable amount of time and
3 resources creating and obtaining top-quality, marketable and aesthetically-appealing designs.
4 Customers of Plaintiff, including possibly DOE defendants named herein, take design samples
5 with the understanding and agreement that they will only utilize Plaintiff to reproduce said
6 designs should they wish to do so, and will not seek to make minor changes to Plaintiff's
7 proprietary work to reproduce the same elsewhere, yet use those designs in furtherance of their
8 business in violation of both their contractual agreement with Plaintiff and Plaintiff's copyrights.
9 No other party is authorized to make sales of product bearing Plaintiff's proprietary designs
10 without express permission from Plaintiff. This action is brought to recover damages for direct,
11 vicarious and contributory copyright infringement arising out of the misappropriation of
12 Plaintiff's exclusive designs by the Defendants, and each of them.

13

14

15 **JURISDICTION AND VENUE**

16 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 *et seq.*
17 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and (b).
18 3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and 1400(a) in that this is
19 the judicial district in which a substantial part of the acts and omissions giving rise to the
20 claims occurred.

21

22

23 **PARTIES**

24 4. UNICOLORS, Inc. ("Plaintiff") is a corporation organized and existing under the laws of the
25 State of California with its principal place of business in the County of Los Angeles, at 3251
26 East 26th Street, Vernon, CA 90058.
27 5. Plaintiff is informed and believes and thereon alleges that Defendant MACY'S, INC.
28 ("MACY'S"), is, and at all times herein mentioned was, a corporation organized and existing

1 under the laws of Delaware and doing business in California, with its principal place of
2 business at 7 West Seventh Street, Cincinnati, OH 45202.

3 6. Plaintiff is informed and believes and thereon alleges that Defendant NOTATIONS, INC.
4 d/b/a ELEMENTZ, ("NOTATIONS"), is, and at all times herein mentioned was, a
5 corporation organized and existing under the laws of Pennsylvania and doing business in
6 California, with its principal place of business at 539 Jacksonville Road, Warminster, PA
7 18974.

8 7. Named Defendants, and Does 1-20, may be collectively referred to as "Defendants."

9 8. Plaintiff is informed and believes and thereon alleges that some of Defendants Does 1
10 through 3, inclusive, are manufacturers and/or vendors of garments to Defendant, which
11 DOE Defendants have manufactured and/or supplied and are manufacturing and/or supplying
12 garments comprised of fabric printed with Plaintiff's copyrighted design(s) (as hereinafter
13 defined) without Plaintiff's knowledge or consent or have contributed to said infringement.

14 The true names, whether corporate, individual or otherwise, and capacities of defendants
15 sued herein as Does 1 through 3 are presently unknown to Plaintiff at this time, and therefore,
16 Plaintiff sues said defendants by such fictitious names. Plaintiff will seek leave to amend this
17 complaint to allege their true names and capacities when the same have been ascertained.

18 Plaintiff is informed and believes, and based thereon alleges, that each of defendants
19 designated as a DOE is responsible in some manner for the events alleged herein and the
20 damages caused thereby.

21 9. Defendants DOES 4 through 20, inclusive, are other parties not yet identified who have
22 infringed Plaintiff's copyrights, have contributed to the infringement of Plaintiff's
23 copyrights, or have engaged in one or more of the wrongful practices alleged herein. The true
24 names, whether corporate, individual or otherwise, and capacities of defendants sued herein
25 as Does 4 through 20 are presently unknown to Plaintiff at this time, and therefore, Plaintiff
26 sues said defendants by such fictitious names. Plaintiff will seek leave to amend this
27 complaint to allege their true names and capacities when the same have been ascertained.

28 10. Plaintiff is informed and believes and thereupon alleges that at all times relevant hereto each

1 of Defendants acted in concert with each other, was the agent, affiliate, officer, director,
2 manager, principal, alter-ego, and/or employee of the remaining defendants and was at all
3 times acting within the scope of such agency, affiliation, alter-ego relationship and/or
4 employment; and actively participated in or subsequently ratified and adopted, or both, each
5 and all of the acts or conducts alleged, with full knowledge of all the facts and circumstances,
6 including without limitation to full knowledge of each and every wrongful conducts and
7 Plaintiff's damages caused therefrom.

8

9 **CLAIMS RELATED TO DESIGN**

10 11. Plaintiff is the owner and author of a two-dimensional artwork called GD201, under title
11 Flower 2009 (02) ("Subject Design"). (Exhibit A).

12 12. Plaintiff applied for a copyright from the United States Copyright Office for the Subject
13 Design and was granted Registration No. VA 1-712-384 effective on February 23, 2009.
14 (Exhibit B).

15 13. Plaintiff formatted the Subject Design for use on textiles, sampled the Subject Design, and
16 negotiated sales of fabric bearing the Subject Design.

17 14. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization,
18 Defendant MACY'S purchased, sold, manufactured, caused to be manufactured, imported
19 and/or distributed fabric and/or garments comprised of fabric featuring a design which is
20 identical, or substantially similar to, the Subject Design. A true and correct copy of such a
21 garment is attached hereto as Exhibit C. Said garments include but are not limited to
22 garments sold by MACY'S bearing the label "elementz" under RN 58719, which indicates
23 that the garments were manufactured by or for NOTATIONS.

24 15. At various times Defendant MACY'S owned and controlled offline and/or online retail
25 stores, and each, Plaintiff's investigation revealed that garments comprised of fabric bearing
26 the Subject Design were being offered for sale, garments which were manufactured and/or
27 imported under the direction of the Defendants, and each of them.

1 16. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization,
2 Defendant NOTATIONS purchased, sold, manufactured, caused to be manufactured,
3 imported and/or distributed fabric and/or garments comprised of fabric featuring a design
4 which is identical, or substantially similar to, the Subject Design.

5 17. None of the aforementioned transactions were authorized by Plaintiff, and all were in
6 violation of Plaintiff's intellectual property rights.

7

8 **FIRST CLAIM FOR RELIEF**

9 (For Copyright Infringement – Against all Defendants, and Each)

10 18. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the
11 allegations contained in Paragraphs 1 through 16, inclusive, of this Complaint.

12 19. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
13 accessed the Subject Design through, without limitation, the following: (a) access to
14 Plaintiff's design library; (b) access to authorized or unauthorized reproductions in the
15 possession of other vendors and/or DOE Defendants; and (c) access to Plaintiff's strike-offs,
16 swatches, paper CADs and samples.

17 20. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
18 infringed Plaintiff's copyright by importing, creating, making and/or developing directly
19 infringing and/or derivative works from the Subject Design and by importing, producing,
20 distributing and/or selling infringing garments through a nationwide network of retail stores,
21 catalogues, and online websites.

22 21. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its
23 business in an amount to be established at trial.

24 22. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages
25 to its business in an amount to be established at trial.

26 23. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of
27 them, have obtained direct and indirect profits they would not otherwise have realized but for
28 their infringement of the Subject Design. As such, Plaintiff is entitled to disgorgement of

1 Defendants' profits directly and indirectly attributable to Defendants' infringement of the
2 Subject Design in an amount to be established at trial.

3 24. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
4 have committed acts of infringement alleged herein with actual or constructive knowledge of
5 Plaintiff's rights such that Plaintiff is entitled to a finding of willful infringement.

6

7 **SECOND CLAIM FOR RELIEF**

8 (For Vicarious and/or Contributory Copyright Infringement – Against All Defendants)

9 25. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the
10 allegations contained in Paragraphs 1 through 23, inclusive, of this Complaint.

11 26. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
12 knowingly induced, participated in, aided and abetted in and resultantly profited from the
13 illegal reproduction, importation, purchase, distribution and/or sales of product featuring the
14 Subject Design as alleged herein above.

15 27. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are
16 vicariously liable for the infringement alleged herein because they had the right and ability to
17 supervise the infringing conduct and because they had a direct financial interest in the
18 infringing product.

19 28. By reason of the Defendants', and each of their, acts of contributory and/or vicarious
20 infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial
21 damages to its business in an amount to be established at trial, as well as additional general and
22 special damages in an amount to be established at trial.

23 29. Due to Defendants' acts of contributory and/or vicarious copyright infringement as alleged
24 herein, Defendants, and each of them, have obtained direct and indirect profits they would
25 have not otherwise realized but for their infringement of the Subject Design. As such,
26 Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable
27 to Defendants' infringement of the Subject Design, an amount to be established at trial.

1 30. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
2 have committed acts of infringement alleged herein with actual or constructive knowledge of
3 Plaintiff's rights such that Plaintiff is entitled to a finding of willful infringement.

4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

7 **Against All Defendants**

8 With respect to Each Claim for Relief:

9 1. That Defendants, their agents and servants be enjoined from infringing Plaintiff's copyrights
10 in any manner;

11 2. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, the exact sum
12 to be proven at time of trial, or, if elected before final judgment, statutory damages as
13 available under the Copyright Act, 17 U.S.C. § 101 *et seq.*;

14 3. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act, 17 U.S.C.
15 § 101 *et seq.*;

16 4. That Plaintiff be awarded pre-judgment interest as allowed by law;

17 5. That Plaintiff be awarded costs of litigation; and

18 6. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

19

20

21 **DEMAND FOR TRIAL BY JURY**

22 Plaintiff hereby demands a trial by jury in this action pursuant to Federal Rule of Civil Procedure
23 38 and the Seventh Amendment of the Constitution.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2 Dated: January 28, 2015
3
4

5 Respectfully submitted,
6

7 /s/
8

9 C. Yong Jeong, Esq.
10 Paul Cohen, Esq.
11 Daniel Hoffman, Esq.
12 Attorneys for Plaintiff, UNICOLORS, INC.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28